

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

ROBERT M. TAYLOR, III, et al.)	
)	
PLAINTIFFS,)	
)	CASE NO.
VS.)	1:23-cv-00047-JRH-BKE
)	
UNIVERSITY HEALTH SERVICES, INC.)	
and PIEDMONT HEALTHCARE, INC.,)	
)	
DEFENDANTS)	

PLAINTIFFS' SECOND SUPPLEMENTAL BRIEF
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

The Defendants have taken the position that the agreement to provide free Medicare supplemental policies to certain employees who agreed to keep their jobs for 30 years or more and who were hired prior to January 1, 2005 was part of some "Employee Welfare Plan" governed by ERISA. In the arguments being made by the Defendants, they have yet to produce any such "welfare plan" which would have to be in writing. In this case, the Defendants have a written plan specifying this benefit, or the documents do not exist. The filing of Form 5500 is not the written plan.

Robert M. Taylor, III has filed another supplemental affidavit and has included in his Affidavit certain documents that have come to light. The documents that have recently been uncovered show that University Hospital at one time had a nationwide certified public accounting firm do an analysis of various scenarios as to how to try to satisfy this contractual obligation to these retired employees. In that document, there was no mention of an ERISA plan or any fiduciary duty that would have been owed to the participants of that plan! To date, there has been

no ERISA retiree medical plan produced and to the knowledge of Plaintiff Taylor and others, there was apparently never any written ERISA plan, only the written documents attached to the complaint. Also attached to Plaintiff Taylor's affidavit are actuarial analyses that were performed by March Mercer & Kroll which documents set forth the number of individuals who are still covered by the United Health Care Medicare supplement plan, as well as the number of individuals who were persuaded to utilize a Medicare advantage plan, with substantial saving to University Hospital and to the detriment to retirees who University persuaded to use a Medicare advantage plan. Nothing in this actuarial analysis mentions anything about any employee welfare plan or this obligations being part of any employee welfare plan. Under ERISA Regulation 29 C.F.R., Part 2520, Plan Sponsors must provide participants with a summary plan description outlining benefits, eligibility and other plan details. If such a welfare plan relating to this insurance obligation exists, it would be in the possession of University Hospital and Piedmont, not the Plaintiffs. Why hasn't this written plan been produced?

The Defendants have the burden of Showing the jurisdiction of this court and they have failed to do so. There is nothing in the documents upon which the Plaintiff based its claims, which are attached to Plaintiff's complaint that relate to any ERISA plan and in that the Defendants have refused to produce any such documents, this Court should not find that federal jurisdiction exists.

This 28th day of June, 2023.

/s/ **John B. Long**

JOHN B. LONG, ESQ.

Georgia State Bar No. 457200

/s/ **Thomas W. Tucker**

THOMAS W. TUCKER, ESQ.

Georgia State Bar No. 717975

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on this date, the foregoing *Plaintiffs' Second Supplemental Brief in Opposition to Defendants' Motion to Dismiss* was filed with the Clerk of Court in accordance with ECF rules using the CM/ECF system and was served electronically upon counsel for the other parties and by placing a copy of same in the United States Mail with adequate postage thereon, properly addressed to:

Edward H. Wasmuth, Jr., Esq.
Emily E. Friedman, Esq.
Smith Gambrell & Russell, LLP
1105 W. Peachtree Street, NE
Suite 1000
Atlanta, GA 30309
ewasmuth@sgrlaw.com
efriedman@sgrlaw.com

This 28th day of June, 2023.

/s/John B. Long

JOHN B. LONG, ESQ.
Georgia State Bar No. 457200

/s/Thomas W. Tucker

THOMAS W. TUCKER, ESQ.
Georgia State Bar No. 717975

Attorneys for Plaintiffs

OF COUNSEL:
TUCKER LONG, P.C.
P. O. BOX 2426
453 GREENE STREET
AUGUSTA, GA 30903
(706) 722-0771
(706) 722-7028 Fax
jlong@tuckerlong.com
ttucker@tuckerlong.com